

ROBERT E. ECKELS
JANET I. WHITE

IBLA 87-40, 87-60

Decided August 22, 1988

Appeal from decisions of Eastern States Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offers ES 35302 and ES 35306.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases:
Offers to Lease

BLM properly rejects noncompetitive oil and gas lease offers for land determined to be within the known geologic structure of a producing oil or gas field where the offeror fails to establish by a preponderance of the evidence that BLM's determination is in error and where BLM justifiably relies on its technical experts for determination of the existence and extent of a known geologic structure.

APPEARANCES: Robert E. Eckels and Janet I. White, pro se; Mary Katherine Ishee, Esq., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Robert E. Eckels and Janet I. White appeal from separate decisions of the Eastern States Office, Bureau of Land Management (BLM), dated September 9, 1986, rejecting their simultaneous oil and gas lease offers ES 35302 and ES 35306 respectively. Eckels was the successful drawee for Parcel No. ES-110 in the Eastern States August 1985 simultaneous oil and gas drawing. White was the successful drawee for Parcel No. ES-114 in the same drawing.

BLM stated in its decisions that the Milwaukee District Office, BLM, informed the Eastern States Office by memorandum dated June 5, 1986, that all of the lands in Parcel Nos. ES-110 and ES-114 are within the boundaries of the Newaygo-Mecosta known geological structure (KGS) that was effective December 25, 1985. Therefore, BLM determined that these lands were unavailable for noncompetitive leasing. In support of its decisions, BLM cited 43 CFR 3112.5-2 which provides:

(b) If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer

shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field.

In the introduction to its KGS report, BLM explained that "[a] review of recent deep wells in Lake, Mason, Osceola, Oceana, Newaygo, Mecosta, Montclm, Kent, and Muskegon counties has revealed that the recently discovered Prairie du Chien production from the Goodwell and Norwich Fields is related to a negative magnetic anomaly." Review of this area has been occasioned, BLM explained, by recent over-the-counter applications and successful tests of the Prairie du Chien formation.

In the KGS report BLM states that the Newaygo-Mecosta KGS has a total acreage of approximately 363,260 acres. BLM states that the Newaygo-Mecosta KGS includes lands within the Goodwell-Norwich and Barton KGS's in Newaygo County but that it is not an extension or combination of the previous KGS's. Instead, BLM explains, the Newaygo-Mecosta KGS is based on a new producing structure defined by new drilling to the Prairie du Chien and lower formations. BLM notes that over 180 wells were considered in the delineation of the structure of this KGS.

BLM listed its data and sources for the KGS report. The well data was obtained from the Petroleum Information Corporation (P.I.) and the Michigan State Geological Survey. All available logs were obtained for the Prairie du Chien wells. A key source of the general shape and areal extent of the field is the Magnetic Anomaly Map published by the Michigan Geological Survey, which was further studied and interpreted by Richard Kellogg in his doctoral thesis done at Michigan State University in Lansing. Maps of formations above the St. Peter-Prairie du Chien contact were created to see if formations higher in the section above the Post-Knox Unconformity also reflected the deep features suggested by the magnetic data.

BLM discussed the geological environment of the Michigan basin, the stratigraphy of the region, magnetic data, significant features of the geologic history of the Mid-Michigan area, mapping parameters, well test and initial production data, and alternative data interpretations. BLM summarized its KGS report as follows:

The Newaygo Mecosta KGS, although very large in comparison to other, shallower fields in Michigan, is representative of the type of field in the frontier portions of the deep Michigan Basin. Exploration for the Prairie du Chien and deeper formations must be done using tools and concepts such as magnetics, gravity, and the Mid-Continent rift which were not applicable to the relatively shallow and geologically straightforward exploration usually done in the Michigan Basin. While these tools are rather new to the Michigan Basin, they have been successfully used all over the world for many years to explore for oil and gas resources. The law, the courts, the guidelines and regulations, as well as common sense dictate that all available, applicable data and all reasonable geology be considered in a KGS determination, particularly in a frontier area. All available well data,

as well as the regional gravity, magnetics, and plate tectonics were utilized to determine the nature and extent of the structure beneath the Newaygo Mecosta KGS.

On August 19, 1987, Eckels filed the following statement of reasons: 1/

1. We still cannot identify the KGS area with a named field.
2. We have become acquainted with the detail of the critique and the current objections to this KGS as presented by Mr. John M. Parker to Mr. Robert Burford at the Bureau of Land Management and

1/ On Sept. 30, 1986, Robert E. Eckels filed a timely notice of appeal in which he referred to the possibility that the Newaygo-Mecosta KGS might be reviewed and requested that a decision regarding his lease offer be held in abeyance for 6 months and considered in light of any corrective developments concerning the KGS. On Mar. 30, 1987, Eckels requested that a decision on the lease offer be held in abeyance for a minimum of an additional 12 months unless the lease is issued.

In his letter to the Board dated July 28, 1987, Eckels noted that there were several appeals pending before the Board dealing with lease offers for lands included within the Newaygo-Mecosta KGS. Eckels requested that his lease be considered for issuance after the related appeals have been decided, and that proceedings in this appeal be stayed pending disposition of the related appeals.

In response the Board issued an order dated Aug. 11, 1987, in which it noted that Departmental regulation 43 CFR 4.412(a) provides that "[i]f the notice of appeal did not include a statement of the reasons for the appeal, the appellant shall file such a statement with the Board * * * within 30 days after the notice of the appeal was filed." The Board pointed out that the regulations do not permit an appeal to be stayed in the manner sought by Eckels, and that a statement of reasons must be filed if the appeal is to be considered on the merits. However, the Board may grant an extension of time in which to file a statement of reasons. See 43 CFR 4.22(f). The Board allowed Eckels until Sept. 11, 1987, to file a statement of reasons. On Aug. 19, 1987, appellant filed a statement of reasons. Then, on Mar. 14, 1988, appellant again requested a continuance of time for appeal or that his appeal be considered after related cases are settled. This request was followed by a letter dated June 15, 1988 in which he noted that his lease had been included in a KGS action "and that the instance was included in the BLM audit report of Feb. 23, 1988, of the Federal Register."

Eckels explained that he did not have any information on this and was faced with medical problems. Eckels requested that the Board bring him up to date on activities regarding the lease and suggested that he might file a motion to stay until he had an opportunity to pursue the matter. As explained in our order of Aug. 11, 1987, there is no regularity provision permitting such a stay. Appellant has been allowed ample time in which to file information in support of his appeal.

referred by that reference to them as adequate reason alone for altering the size and scope of the KGS involved. That letter and supporting documents were presented under date of November 28, 1986.

3. The size of this KGS is unreasonable considering the justification for any such designation is based on well completions suggesting commercial production. Within the stated area are numerous dry holes to the Prairie du Chien formation and by the logic of identifying any KGS with producing wells, dry holes have to be similarly considered, and based on such consideration this lease should not be included in this KGS.

In her notice of appeal dated October 6, 1986, White makes a general statement objecting to the size of the KGS. 2/

In its answer, BLM asserts that the Mineral Leasing Act specifically authorizes the Secretary to define a KGS. 30 U.S.C. | 189 (1982). BLM states that it based its determination of the Newaygo-Mecosta KGS on a careful evaluation of all geologic data available at the time of the KGS determination and that the basis for its conclusions has been thoroughly documented in the final KGS report. BLM has concluded that this information indicates that a producing gas and/or oil structure underlies the entire area of the Newaygo-Mecosta KGS. BLM admits that this KGS encompasses a large area. However, BLM contends that the geology indicates an extremely large structure and that it has presented a rational geologic basis for its belief.

Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. | 226(b) (1982), provides that public domain lands within the "known geological structure of a producing oil or gas field * * * shall be leased to the highest responsible qualified bidder by competitive bidding." A KGS, as defined by Departmental regulation, is "technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined

2/ White filed her notice of appeal on Oct. 6, 1986, in which she noted the Newaygo-Mecosta KGS was being reviewed. She requested that her appeal be suspended for 6 months and considered in light of any changes in the KGS designation. By orders dated Apr. 6, and June 26, 1987, the Board granted White extensions of time in which to file her statement of reasons. On July 15, 1987, White applied for an "indefinite extension of time" in which to file a statement of reasons while urging that her appeal should be considered "on the same basis" as other related appeals concerning the KGS. In an order dated July 17, 1987, the Board stated that the regulations do not permit a waiver of the requirement to file a statement of reasons with the Board. See 43 CFR 4.412. However, the Board allowed White until Aug. 17, 1987, in which to file a statement of reasons. No further filings have been received by the Board.

to be productive, the limits of which include all acreage that is presumptively productive." 43 CFR 3100.0-5(1). ^{3/} The Secretary of the Interior is authorized to fix and determine the boundary lines of any structure or oil or gas field. 30 U.S.C. | 189 (1982).

It is well settled that where lands embraced in a noncompetitive oil and gas lease offer are determined to be within a KGS at any time prior to issuance of a lease, the noncompetitive lease offer must be rejected. Carol Ann Hoffman, 100 IBLA 139, 145 (1987); Carolyn J. McCutchin, 99 IBLA 29, 31 (1987); Evelyn D. Ruckstuhl, 91 IBLA 384, 385 (1986); 43 CFR

3112.5-2(b). Rejection of a lease offer is mandated even where, but for the delay in lease issuance, the lease might have issued prior to the KGS determination. Frederick W. Lowey, 76 IBLA 195, 198 (1983). The Department has no discretion to issue a noncompetitive oil and gas lease for KGS lands. McDonald v. Clark, 771 F.2d 460, 464 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

[1] The Secretary of the Interior has traditionally delegated the duty for determination of the existence and extent of a KGS to his technical expert in the field. When that expert makes such a determination, the Secretary is entitled to rely upon its reasoned opinion. Jack J. Grynberg, 96 IBLA 316, 319 (1987); Bruce Anderson, 63 IBLA 111, 113 (1982). A determination by Departmental technical experts will ordinarily not be set aside where it is not arbitrary or capricious and is supported by competent evidence. Ralph E. Peterson, 94 IBLA 340, 342 (1986); Thunderbird Oil Corp., 91 IBLA 195, 202 (1986), aff'd sub nom. Planet Corp. v. Hodel, CV No. 86-679 HB (D.N.M. May 6, 1987). BLM's KGS determination is supported by a well documented report.

An applicant for a noncompetitive oil and gas lease who challenges a determination by BLM that land is within the KGS of a producing oil or gas field has the burden of showing by a preponderance of the evidence that the determination is in error. Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984); Carolyn J. McCutchin, *supra*; Richard E. O'Connell, 98 IBLA 283 (1987).

Eckels refers to a document presented by John M. Parker to BLM on November 28, 1986, in which he objects to the size and scope of the KGS in question. As the Board stated in B.K. Killion, 90 IBLA 378, 386 (1986),

[w]here * * * differences of [expert] opinion exist and the appellant has not shown that his interpretation of the data is more likely to be correct than that of the BLM, the Board will

^{3/} Upon passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-259, this concept was deleted from 30 U.S.C. | 226 (1982). Oil and gas lease applications and offers pending on Dec. 22, 1987, were, however, to be processed and leases issued under the provisions of the Act of Feb. 25, 1920, as in effect before its amendment by P.L. 100-203.

sustain the BLM finding. Sherbourne Partnership, 90 IBLA 130 (1985); Edward W. Eidt, [89 IBLA 270 (1985)]. [Footnote omitted.]

Eckels also asserts that based on the consideration of dry holes in the area, his lease should not be included in the KGS. However, an appellant fails to demonstrate error in BLM's decision by the mere identification of dry holes in acreage designated KGS. Carol Ann Hoffman, *supra* at 141; Beard Oil Co., 99 IBLA 40, 46 (1987); Carolyn J. McCutchin, *supra*.

A KGS determination will not be condemned simply because the KGS encompasses a large area. As BLM stated in its report, although very large in comparison to other shallower fields in Michigan, the Newaygo-Mecosta KGS is representative of the type of field in the frontier portions of the deep Michigan Basin. BLM's report shows that all available well data, as well as regional gravity, magnetics, and plate tectonics were utilized to determine the nature and extent of the structure beneath the Newaygo-Mecosta KGS.

Appellants Eckels and White have failed to establish by a preponderance of the evidence that the Newaygo-Mecosta KGS did not properly include the lands embraced in their lease offers.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge